

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 BILLY JOE McDONALD, ) Case No.: 1:20-cv-01003-SAB (PC)  
12 Plaintiff, )  
13 v. ) ORDER TO SHOW CAUSE WHY ACTION  
14 DR. PHATAL, ) SHOULD NOT BE DISMISSED, WITHOUT  
15 Defendant. ) PREJUDICE, FOR FAILURE TO EXHAUST THE  
16 ) ADMINISTRATIVE REMEDIES  
17 ) [ECF No. 1]  
18 )  
19 )  
20 )  
21 )

18 Plaintiff Billy Joe McDonald is proceeding *pro se* and *in forma pauperis* in this civil rights  
19 action pursuant to 42 U.S.C. § 1983.

20 Plaintiff filed the instant action on July 21, 2020. On August 10, 2020, the Court granted  
21 Plaintiff's application to proceed *in forma pauperis*.

22 **I.**

23 **SCREENING REQUIREMENT**

24 The Court is required to screen complaints brought by prisoners seeking relief against a  
25 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court  
26 must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous  
27 or malicious," that "fail[] to state a claim on which relief may be granted," or that "seek[] monetary  
28

1 relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); see also 28  
2 U.S.C. § 1915A(b).

3 A complaint must contain “a short and plain statement of the claim showing that the pleader is  
4 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
5 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do  
6 not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550  
7 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally participated  
8 in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

9 Prisoners proceeding *pro se* in civil rights actions are entitled to have their pleadings liberally  
10 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th  
11 Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible, which  
12 requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is  
13 liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,  
14 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and  
15 “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying the plausibility  
16 standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

## 17 II.

### 18 EXHAUSTION OF ADMINISTRATIVE REMEDIES

19 Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with  
20 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined  
21 in any jail, prison, or other correctional facility until such administrative remedies as are available are  
22 exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available administrative  
23 remedies prior to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007); McKinney v. Carey, 311 F.3d  
24 1198, 1199-1201 (9th Cir. 2002). Exhaustion is required regardless of the relief sought by the prisoner  
25 and regardless of the relief offered by the process, Booth v. Churner, 532 U.S. 731, 741 (2001), and  
26 the exhaustion requirement applies to all suits relating to prison life, Porter v. Nussle, 435 U.S. 516,  
27 532 (2002).

28 ///

Prisoners are required to exhaust before bringing suit. Booth, 532 U.S. at 741. From the face of Plaintiff's Complaint, it appears clear that Plaintiff filed suit prematurely and in such instances, the case may be dismissed. Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir. 2014) (*en banc*) (where failure to exhaust is clear from face of complaint, case is subject to dismissal for failure to state a claim under Rule 12(b)(6)); Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003) ("A prisoner's concession to nonexhaustion is a valid ground for dismissal....") (overruled on other grounds by Albino, 747 F.3d at 1168-69); see also Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014) ("Dismissal for failure to state a claim under § 1915A 'incorporates the familiar standard applied in the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).' ") (quoting Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012)).

It appears on the face of Plaintiff's Complaint that she has not exhausted her administrative remedies pursuant to the Prison Litigation Reform Act, 41 U.S.C. § 1997 (e)(a), before filing this lawsuit. Plaintiff indicates in the complaint that he did not complete the process to exhaust his administrative remedies. (ECF No. 1 at 2.) Plaintiff has answered "no" to the question "Is the process completed?" (Id.) Plaintiff also states on page 2 of the complaint that "The are [sic] still choosen [sic] the best thing to help me and the other party." (Id.) Thus, it appears on the face of the complaint that Plaintiff failed to exhaust his administrative remedies before filing suit. Accordingly, Plaintiff shall be required to show cause why this case should not be dismissed, without prejudice, for failure to exhaust remedies prior to filing suit.

### III.

#### ORDER

Based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff shall show cause in writing within thirty (30) days of the date of service of this order as to why this case should not be dismissed for Plaintiff's failure to exhaust administrative remedies before filing suit; and

///

///

2. The failure to respond to this order will result in a recommendation to a district judge to

1 dismiss the case, without prejudice.

2  
3 IT IS SO ORDERED.

4 Dated: August 10, 2020

A handwritten signature in blue ink, appearing to read "J. A. Bae", is written over a light blue rectangular background.

UNITED STATES MAGISTRATE JUDGE